

REMARKS

The title of the application has been changed and the specification has been amended to improve form. Claims 1, 2 and 4-12 have been amended to improve form and new claims 13-19 have been added. Claims 1-19 are now pending in this application.

Claims 1-12 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Nagata et al. (U.S. Patent No. 6,269,083; hereinafter Nagata) in view of Shimada (U.S. Publication 2002/0021670). The rejection is respectfully traversed.

The present application and Shimada were both commonly assigned or subject to an obligation or assignment to NEC Corporation at the time the applicant's invention was made. The applicant notes that the assignment for Shimada to NEC Corporation is shown on U.S. Patent No. 6,483,809 (i.e., the U.S. Patent corresponding to the Shimada published application). The original assignment for the present application to NEC Corporation has been recorded on Reel 012102, Frame 0584. Shimada, therefore, cannot preclude patentability under 35 U.S.C. § 103 in light of the American Inventors Protection Act of 1999 (hereinafter AIPA), effective for all applications filed on or after November 29, 1999.

Section 103(c) of 35 U.S.C. states: "Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f) and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person."

The present application was filed on August 20, 2001, which is after the November 29, 1999 enactment date of this provision of the AIPA. This filing date of August 20, 2001 is before the February 21, 2002 publication date of Shimada. Thus, Shimada would qualify as prior art with respect to the present application only under subsection (e) of 35 U.S.C. § 102. Since the present application and Shimada were both commonly assigned or subject to an obligation of assignment to NEC Corporation at the time of the applicant's invention, Shimada cannot be used to preclude patentability of the present invention under 35 U.S.C. § 103.

For at least this reason, withdrawal of the rejection and allowance of claims 1-12 are respectfully requested.

NEW CLAIMS

New claims 13-20 have been added. These claims are believed to be allowable over the cited art of record.

For example, claim 13 recites a system comprising a plurality of testing devices, a plurality of path handlers, a plurality of channel handlers, a plurality of trunks and a control unit. The control unit is configured to issue an instruction to a first one of the plurality of testing devices, the instruction indicating that the first testing device is to perform a loopback control test. The first testing device is configured to receive the instruction, send test data to at least one of the path handlers, channel handlers or trunks in response to the instruction, receive back at least some of the test data and forward results of the loopback control test to the control unit. The control unit is further configured to identify a fault based on the forwarded results. The cited art of record does

not disclose or suggest these features. Accordingly, allowance of claim 13 and its dependent claims 14-19 are respectfully requested.

CONCLUSION

In view of the foregoing amendments and remarks, the applicant respectfully requests withdrawal of the outstanding rejection and the timely allowance of this application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 50-1070 and please credit any excess fees to such deposit account.

Respectfully submitted,

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